

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ANDREA M WILLIAMS, et al.,  
Plaintiffs,  
v.  
APPLE, INC.,  
Defendant.

Case No. [19-cv-04700-LHK](#) (VKD)

**ORDER RE DISCOVERY DISPUTE RE  
ESI CUSTODIANS**

Re: Dkt. No. 50

The parties ask the Court to resolve a dispute concerning which custodians' files defendant Apple, Inc. ("Apple") should be required to search for electronically stored information responsive to plaintiffs' document requests. Dkt. No. 50. The court held a hearing on this dispute on August 18, 2020. Dkt. No. 56. As explained below, the Court will require Apple to search the files of three additional custodians, subject to the limitations described below.

**I. BACKGROUND**

Plaintiffs Andrea Williams and James Stewart initiated this action on behalf of a putative class of U.S. subscribers to Apple's iCloud service. Plaintiffs claim that Apple falsely represented that subscribers' information would be stored by Apple on its own servers, when in fact the information is stored on servers maintained by third parties.

Plaintiffs served a first set of document requests on Apple in late October 2019, to which Apple responded in December 2019. Dkt. Nos. 50-1, 50-2. On July 2, 2020, the parties filed a stipulation governing discovery of electronically stored information ("ESI"), which was entered as an order by the Court. Dkt. No. 44. The stipulation provides that "[t]he parties shall meet and confer to reach agreement on a reasonable list of custodians for purposes of collection, review and

1 production of [ESI]” and that “each party shall provide a proposed list of individual custodians  
2 who are knowledgeable about and were involved with the core issues or subjects in the case.” *Id.*  
3 at 2. The parties further stipulate that they will endeavor to negotiate search terms for application  
4 to collected ESI that do not produce “an unreasonably large number of non-responsive or  
5 irrelevant results.” *Id.*

6 Apple has identified six custodians whose files it has already begun to search for  
7 responsive ESI. Dkt. No. 50 at 1. Plaintiffs request that Apple search the files of three additional  
8 custodians: Markus Fischer, Eric Billingsley, and Patrick Gates. *Id.* Apple objects to searching  
9 the files of these additional custodians. *Id.* at 5.

## 10 **II. DISCUSSION**

11 Plaintiffs argue that Messrs. Fischer, Billingsley, and Gates are “central” witnesses in this  
12 case. *Id.* at 2. According to the parties, Mr. Fischer is a Director of Systems Engineering Internet  
13 Services, which includes the iCloud service. *Id.* at 4. He was involved in “strategy and modeling  
14 to assess Apple’s future needs for third-party cloud storage” until November 2015, and he ceased  
15 to have any responsibilities with respect to iCloud in early 2019. *Id.* at 7 & n.1. Mr. Billingsley  
16 was Apple’s former Director of Internet Services Operations from October 2013 to October 2017.  
17 *Id.* at 3, 7. He has been described in at least one industry article as “in charge of the back-end  
18 technology for iCloud.” *Id.* at 3. According to Apple, he was involved in “determining how much  
19 storage Apple needed to obtain from third party service and managing Apple’s procurement of  
20 those services” until November 2015. *Id.* at 7. Mr. Gates was Apple’s former Senior Director of  
21 Engineering. *Id.* at 7. He was “generally responsible for Apple’s backend infrastructure across  
22 numerous projects,” and managed or worked closely with other Apple employees with specific  
23 responsibilities related to iCloud and third-party storage for iCloud. *Id.* Plaintiffs argue that “[t]he  
24 whole case is about iCloud infrastructure,” and given their roles at Apple, these three custodians  
25 are likely to have unique documents responsive to plaintiffs’ document requests. *Id.* at 2.

26 Apple objects to expanding its custodial search to include Messrs. Fischer, Billingsley, and  
27 Gates on two grounds. First, Apple points out this is primarily a false advertising case, and argues  
28 that director-level custodians with management responsibilities for the engineering aspects of the

iCloud infrastructure are unlikely to have any documents relevant to plaintiffs' claims. Second, Apple argues that these three custodians' documents are likely duplicative of the documents in the files of the six custodians Apple has already agreed to search. For this reason, Apple says requiring it to collect, search, and review additional custodians' documents is burdensome and disproportionate to the needs of the case. *Id.* at 5-6. Apple acknowledges one exception: It concedes that Messrs. Fischer and Billingsley may have some unique documents for the period from August 2015 to November 2015,<sup>1</sup> and Apple has agreed to search these two custodians' files for responsive documents during this period. *Id.* at 7.

The Court agrees with Apple that the claims in this case do not appear to require significant discovery regarding the technical operation of iCloud. Even if they did involve such matters, the Court would not expect custodial email to be a principal source of useful discovery. The parties advised the Court during the hearing that they have agreed to limit the scope of several of plaintiffs' document requests, and that they are in the process of discussing search terms to apply to Apple's collection of ESI generally. Those matters are not before the Court in this dispute, and the Court will assume that, regardless of the custodian, the parties will endeavor to agree upon search terms that do not hit on an unreasonable number of irrelevant documents. Furthermore, as discussed at the hearing, several of plaintiffs' document requests seek discovery of Apple's decision-making regarding where and how to store iCloud files. Given these employees' roles at Apple, plaintiffs have articulated a reasonable basis for concluding that Messrs. Fischer, Billingsley, and Gates are likely to have some relevant and responsive documents concerning matters that bear on plaintiffs' false advertising claims.

The question is whether this additional discovery is disproportionate to the needs of the case. The parties appear to agree that collection of ESI from the six other custodians Apple has already identified is appropriate, although Apple advises the Court that the search terms it has been asked to apply produce an excessive number of irrelevant documents for review. In this context, Apple's principal concern is that searches of three additional custodians' ESI will be

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<sup>1</sup> The relevant class claims period begins August 20, 2015. *See* Dkt. No. 34 at 2.


1 duplicative of the already burdensome document collection and review efforts it has undertaken.

2 The Court shares Apple's concern. However, in these circumstances, where the key  
3 objection is unnecessarily duplicative discovery, Apple's burden can be substantially mitigated by  
4 application of appropriately narrow search terms and de-duplication of ESI across custodians. If,  
5 as Apple contends, the ESI of Messrs. Fischer, Billingsley, and Gates is largely duplicative of the  
6 ESI already collected from other custodians, then Apple may limit the extent of its document  
7 review by removing the duplicate files from the three custodians' collections before applying  
8 search terms and conducting a review for responsive documents. Accordingly, the Court requires  
9 Apple to search the ESI of these three additional custodians for responsive documents.

10 The Court appreciates that Apple necessarily will incur costs to collect, host, and process  
11 search terms for the three additional custodians' ESI, even before it can determine the extent of  
12 duplication. If it turns out that Apple is correct and the material these custodians have is  
13 substantially duplicative of materials in the collections for the six custodians whose files have  
14 already been searched, the Court will consider shifting the cost of collecting, hosting, and/or  
15 processing these collections to plaintiffs, as permitted by Federal Rule of Civil Procedure  
16 26(c)(1)(B). In addition, the Court encourages the parties to negotiate appropriate search terms for  
17 plaintiffs' ESI discovery of Apple, consistent with their stipulation. Plaintiffs' failure to accept  
18 reasonable limitations on ESI search terms proposed by Apple may also warrant the Court's  
19 consideration of cost-shifting.

20 **IT IS SO ORDERED.**

21 Dated: August 31, 2020

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24 VIRGINIA K. DEMARCHI  
25 United States Magistrate Judge  
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